

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KATRINA MAE WATTERS,

Defendant-Appellant.

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UNPUBLISHED

April 9, 1999

No. 203342

Macomb Circuit Court

LC No. 96-001378 FH

Before: Neff, P.J., and Kelly and Hood, JJ.

PER CURIAM.

Defendant was convicted of attempting to resist and obstruct a police officer, MCL 750.479; MSA 28.747, but was acquitted of other charges, including assault and battery, MCL 750.81; MSA 28.276. Defendant was sentenced to a one-year term of probation, and appeals as of right. We affirm.

Plaintiff argues that it was legally impossible for the jury to convict her of resisting and obstructing arrest. She argues that by acquitting her of the charge of assault and battery, the jury implicitly found that no assault and battery took place. Therefore, she claims that her arrest for assault and battery could not have been lawful, and thus, because a defendant is entitled to resist an unlawful arrest, *People v Landrie*, 124 Mich App 480, 481-482; 335 NW2d 11 (1983), her conviction must be reversed. We disagree.

"An essential element of the crime of resisting and obstructing a police officer is that the officer must have been carrying out lawful duties." *People v Simpson*, 207 Mich App 560, 562; 526 NW2d 33 (1994). The term "lawful duties" encompasses more than just effecting arrests. See *People v Little*, 434 Mich 752, 759; 456 NW2d 237 (1990), where the Court stated "there is ample authority that an officer's efforts to 'keep the peace' include ordinary police functions that do not directly involve placing a person under arrest." Lawful duties covered under the statute include traffic stops and subsequent investigations. *People v Pohl*, 207 Mich App 332, 333; 523 NW2d 634 (1994). Prearrest conduct can support a conviction for resisting and obstructing an officer. *Id.*

In this case, the jury may not have convicted defendant based on conduct that took place while the officers were attempting to place defendant under arrest for assault and battery. They may have

convicted her based on her prearrest conduct. There was testimony that defendant was pulled over for speeding and having an improper plate, and that after the stop, defendant used profanities and refused to cooperate with regard to the traffic violations. She then allegedly pushed the officer who requested to see her license and registration. This alleged pushing led to the arrest for assault and battery. Even if the jury disbelieved that defendant pushed the officer, it could reasonably have concluded that defendant's actions of swearing and refusing to cooperate actively interfered with the officers who were carrying out lawful duties, specifically in the traffic stop and investigation of defendant's speeding and improper plate. See *Pohl, supra*. Because the jury may have convicted defendant based upon her conduct prior to the time of the alleged pushing, the legality of the arrest is not determinative. The conviction was not "legally impossible", and is affirmed.

We also note, however, that it is possible that the jury may have convicted defendant based not only on her prearrest conduct, but also on her physical assaults of the officer before and while he was arresting her. We are not convinced that the jury disbelieved that an assault took place simply because it acquitted defendant of assault and battery. It is possible that the jury did believe an assault and battery took place, but decided to acquit defendant of that charge in order to release her from some of the consequences of her act without absolving her of all responsibility. See *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980). Further, even if the jury's verdicts were inconsistent, reversal of the conviction is not required. *Id.* at 464.

Defendant additionally argues that the trial court erred in failing to instruct the jury that if it found her not guilty of assault and battery, it was required to also find her not guilty of attempting to resist and obstruct a police officer. Defendant failed to request such an instruction or to object to the instructions as given. Thus, the alleged error has been waived unless relief is necessary to avoid manifest injustice. *People v Swint*, 225 Mich App 353, 376; 572 NW2d 666 (1997). Here, no manifest injustice will result from our failure to provide relief. The given instructions fairly presented the issues to be tried and sufficiently protected the rights of defendant. *People v Bartlett*, 231 Mich App 139, 143-144; 585 NW2d 341 (1998).

Affirmed.

/s/ Janet T. Neff  
/s/ Michael J. Kelly  
/s/ Harold Hood